

FIRST APPEAL NO.62 of 2002

1. Special Land Acquisition  
Officer (South Goa),  
Konkan Railway Corporation  
Limited, Amey Guest House,  
Davorlim Road, P.O.  
Navelim, Salcete, Goa,  
403 707,

2. Chief Engineer, Konkan  
Railway Corporation Ltd.,  
Rawanfond, near Margao  
Railway Station,  
Margao, Goa.

... Appellants.

Versus

1. Aurora M.F. do Barretto  
Xavier, near Holy Spirit  
Church, Margao, Goa,  
  
2. Jacinto M. De Q. Barretto  
Xavier,  
  
3. Custodio F. J. V.  
Barretto Xavier, Near  
Holy Spirit Church,  
Margao, Goa, and

4. Maria M.P.L. Barretto  
Xavier, near Holy Spirit  
Church, Margao, Goa.

... Respondents.

Shri E. Afonso, advocate for the appellants.

Shri F. M. Reis, advocate for respondent nos. 1 and 4.

CORAM : P. V. HARDAS &  
N. A. BRITTO, JJ.

DATE : 31st August, 2004.

ORAL JUDGMENT (Per Britto, J.)

This Appeal is directed against the Judgment/Award dated 31st August, 2001, of the learned Additional District Judge, South Goa, Margao, in Land Acquisition Case No.314/95.

2. The parties hereto shall be referred to in the names as they appear in the cause title of the said case.

3. Some brief facts are required to be stated to dispose off the present Appeal.

4. By virtue of Notification dated 13th March, 1991, issued under Section 4 (1) of the Land Acquisition Act, 1894 ("Act", for short) and published in the Official Gazette dated 16th May, 1991, the Government acquired 30,41,160 sq. mts. of land for the purpose of construction of Depot, concrete sleeper plant, etc. for Konkan Railway Corporation at Margao in Salcete Taluka. The applicants were the owners of land surveyed under Chalta no.6 of P.T. Sheet no.516 admeasuring about 9,906 sq. mts. A part of this land admeasuring 4886 sq. mts. was acquired earlier for the construction of what is known as the eastern bypass and out of the remaining area of 4520 sq. mts., an area of 2,236.5 sq. mts. belonging to the applicants was included in this acquisition.

5. The Land Acquisition Officer by virtue of Award dated 1st August, 1994, awarded different rates to different types of land. For example the Land Acquisition Officer awarded Rs.3/- per sq. mt. for untenanted coconut, mixed garden land, Rs.7.50 for untenanted unirrigated rice land, and Rs.25/- for untenanted barad land.

6. The applicants were awarded Rs.3/- per sq. mt. and being dissatisfied with the same the applicants got a reference made to the District Court and in the said reference the applicants claimed enhancement at the rate of Rs.600/- per sq. mt., and, in support thereof the applicants relied upon:-

(a) opinion of an expert;

(b) a sale deed dated 29th March, 1993.  
(Exh.A.W.1/B); and

(c) two Awards in Land Acquisition Case No.85/90/A  
(Exh.A.W.1/F) and Land Acquisition Case No.87/90/A  
(Exh.A.W.1/G).

7. These two Awards pertained to acquisition which was done by virtue of a Notification published in the Official Gazette dated 7th January, 1983. By virtue of the said Awards the compensation which was awarded by the Land Acquisition Officer at Rs.15/- per sq. mt. for paddy field and Rs.17/- per sq. mt. for coconut grove, was enhanced to Rs.200/- per sq. mt.

8. The learned reference court rejected the opinion of the expert Engineer, Shri Moniz, and, in our view, rightly, as it was based on an inspection carried out eight years later after construction of two tanks was done by Konkan Railway

Corporation. Moreover it was based on a sale deed dated 29th March, 1993, which did not reflect the price of Rs.268/- per sq. mt. as will be seen, little later.

9. The learned reference court, however, used the sale deed dated 29th March, 1993 (Exh.A.W.1/D) as an indicium and fixed the compensation of the acquired land at Rs.268/- per sq. mt.

10. At the time of arguments, Shri Afonso, learned counsel appearing for the appellants/respondents, has submitted that the sale deed dated 29th March, 1993, was not a comparable sale instance and, therefore, could not have been relied upon for the purpose of fixing the market value of the acquired land. Shri Afonso has relied upon a judgment of this Court in the case of **Special Land Acquisition Officer & Anr. vs. Amilcar Rosario B. Pereira**, (First Appeal No. 98 of 1999) delivered by a Division Bench of this Court on 16th June, 2004, (of which one of us Britto, J. was a member) and has submitted that based on the said judgment, the price of the acquired land could be fixed, but with further deductions.

11. On the other hand, Shri Reis, learned counsel on behalf of the applicants, has submitted that no fault could have been found with the learned reference court relying upon the said sale deed dated 29th March, 1993, and fixing the market value on the basis of the same. Shri Reis has further

submitted that the said sale deed dated 29th March, 1993, was in all respects a comparable sale instance. Shri Reis has placed reliance, to support his submission, on the case of **Ravinder Narain & Anr. vs. Union of India**, (2003)4 SCC 481. In this case the Hon'ble Supreme Court has held that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made:-

(i) when sale is within a reasonable time of the date of notification under Section 4(1);

(ii) it should be a bona fide transaction;

(iii) it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages; and it is only when these factors are present that it can merit consideration as a comparable case.

12. There can be no quarrel with the principles reiterated by the Hon'ble Supreme Court in the above decision.

13. However, the question is whether the learned Reference Court was at all justified in using the sale deed dated 29th March, 1993, as a comparable sale instance? In our

view, it was not. The submission that the said sale deed dated 29th March, 1993, reflected a price at Rs.268/-per sq. mt. appears to be a myth.

14. There is no doubt that the applicant's property was situated within the area of Margao Municipal Council. It is otherwise common knowledge that the town of Margao is ever-expanding. However, we find that the property of the sale deed dated 29th March, 1993, was situated much closer to the Margao town proper, while the acquired property was situated on the outskirts of Margao town, if we may use that expression and at a distance of about 4 kms. or so from the Margao town proper where Government offices, Margao Municipality are situated. The acquired property was abutting the said eastern bypass on its western side and was accessible from the southern side. It was lower than the said eastern bypass at depths ranging from half meter to six meters. The property of sale deed dated 29th March, 1993, was located at Malbhat, Margao, closer to town proper and at a distance of about 2 kms. from the acquired property. On this count alone, the learned reference court ought to have certainly taken a deduction, but it did not.

15. The documents produced by the applicants show that the parties to the Civil Suit No.65/28/A pending before the learned Senior Civil Judge at Margao, were unable to come to an agreement relating to the sale of two of their

properties and not only that some of the parties owed a sum of Rs.14,81,995.47 to Goa Urban Co-operative Bank, against the said properties. As a result, two of the properties belonging to the said parties in the said Civil Suit, were put for auction which was held on 15th March, 1990. M/s Alcon Real Estates Pvt. Ltd. ("Alcons" for short), were the highest bidders in respect of the first property, namely a house property which they bid for Rs.7,50,000/-. The Alcons were also the highest bidders for the second property known as "Malbota" admeasuring 11,583.50 sq. mts. The bid offered by the said Alcons for this second property was Rs.31,00,600/-. It is this property which reflected a sale price of Rs.268/- per sq. mt. However the controversy between the parties to the said Civil Suit did not end there. The parties to the said civil suit and the said Alcons entered into an agreement on the same day, i.e. 15th March, 1990 and by virtue of this agreement they agreed to purchase the second property with two other properties belonging to the said parties in the said civil suit. The area of the other two properties which were agreed to be purchased by the said Alcons was not mentioned in the agreement. The Alcons agreed to purchase the last three properties not for the said sum of Rs.31,00,600/-, but for a revised sum of Rs.34,67,000/-. It is this agreement which resulted in the execution of the sale deed on 29th March, 1993, by which the said three properties were purchased by the said Alcons, the area of one being known and the areas of the other two were unknown. Therefore, in the absence of the area

of the other two properties not having been mentioned either in the agreement dated 15th March, 1990 or sale deed dated 29th March, 1993, it could not have been said that the property purchased by sale deed dated 29th March, 1993, reflected a price of Rs.268/- per sq. mt. We are informed that on the said properties purchased by the sale deed dated 29th March, 1993, at Malbota, the said Alcons have subsequently put up a prestigious hospital known as Apollo Victor Hospital. A.W.1, Aurora and A.W.4 Jose, made an attempt to show that the properties purchased by Alcons by the said sale deed dated 29th March, 1993, were inaccessible with a view to show that the applicants' property was better situated than the property of sale deed dated 29th March, 1993. It is well said that the witnesses may lie but the documents do not. The sale deed shows that the third property was bounded on the west by road and chapel and the fourth property was bounded on the south by the gutter of Margao to Aquem road. It appears that the said Alcons bided for the said properties or, for that matter, agreed to purchase the other properties with a view to develop the same commercially. The manner in which Alcons went about first bidding for the properties, then entering into an agreement, does not show that Alcons had acted as normal willing purchasers in normal market conditions. The expert, Shri Moniz, and the learned reference court were wrong in assuming that the said sale deed reflected a price of Rs.268/- per sq. mt. The said deed therefore, could not have formed the basis of fixing the

market price of the acquired land.

16. Shri Reis, has next submitted that the awards dated 18th April, 1995 in L.A.C. Nos.85/90/A and 87/90/A could be used as a guide for the purpose of fixing the market value of the acquired land. It is the submission of Shri Reis that these two awards show that the property of the said awards was similar to the acquired property. In our view, the said two awards could have been used as a guide for the purpose of fixing the market value of the acquired land, if there was acceptable evidence regarding comparison. They appear to have been of lands which were partly paddy fields and partly coconut groves. Moreover, it is to be noted that the lands of the said two awards were stated to have been situated at a distance of about 400 mts. from Margao town proper, while the acquired property was situated at a distance of about 4 kms. We do not propose to use them as guides, so that there can also be uniformity in prices to similar lands covered by the same acquisition. Compensation requires to be fixed by adopting a pragmatic approach. There should not be unjust enrichment on the part of Government, nor undue deprivation on the part of the owner.

17. First Appeal no.98/99 decided on 16th June, 2004, arose from Land Acquisition Case No.347/95. In that case, the reference court used a sale deed dated 1st July, 1987, and fixed the market value of the acquired land therein

at the rate of Rs.160/- per sq. mt. It is to be noted that the land in said sale deed dated 1st July, 1987, was very near to the acquired land in this case and this Court did not interfere with the findings given by the learned reference court in fixing the market value at the rate of Rs.160/- per sq. mt.

18. In the case of **Union of India vs. Shri Dhyan Singh & Ors.**, (2000 AIR SCW 4936), the Supreme Court held as follows:-

"In view of the decision of this Court in Civil Appeal No.4405 of 1997 in which the land value has been fixed at Rs.16,750/- per bigha for lands covered by the same notification there is no reason not to adopt the same value as for the land involved in this appeal also."

19. In the case of **Bhim Singh & Ors. vs. State of Haryana & Anr.**, (AIR 2003 S.C. 4382) the Supreme Court observed that:-

"Even otherwise when compensation has already been fixed by the High Court in earlier proceedings and when in one such proceeding this Court has already approved the rate fixed then in our view the best method would be to look at the earlier judgments and Awards. Therefore the High Court cannot be faulted for having fixed compensation on the basis of earlier judgments."

20. Earlier, the Supreme Court in the case of **M/s. Printers House Pvt. Ltd. vs. Mst. Saiyadan (deceased) by L.Rs. & Ors.**, (AIR 1994 SC 1160), had observed that:-

"If 'Comparable Sales Method of Valuation of land' is adopted for determining the market-value of an acquired plot of land, it generally holds good for determination of the market-value of several acquired plots of land if acquisition of all such plots of land is made pursuant to the same preliminary Notification."

21. Again the Supreme Court in the **Delhi Development Authority vs. Bali Ram Sharma & Ors.**, (JT 2004(6) SC 422) observed that:-

"Having regard to the undisputed facts and the material placed on record and in the light of judgment of this Court in Karan Singh's case, it is not possible for us to take a different view as regards market value of the lands covered by the same Notification issued under section 4(1) of the Act."

22. Although the learned Land Acquisition Officer awarded to the respondents compensation at the rate of Rs.3/- per sq. mt, which he had fixed for untenanted coconut land, the acquired land of the respondents appears to have been a mixed garden land which had about 30 coconut trees, one mango tree and 38 other types of trees and being so, was slightly superior to the land of award in Land Acquisition Case No.347/95 (First Appeal No.98/99 decided on 16th June, 2004). Although the acquired land was abutting the said eastern by-pass and was accessible therefrom, it appears that the distance between the Margao-Quepem road and the acquired land was about 20 mts. The land in Land Acquisition Case no. 347/95 was abutting the said Margao-Quepem road, but

apparently was a barren paddy field. The applicants certainly deserved to get little higher compensation than the land involved in Land Acquisition Case No.347/95 (First Appeal No.98/99) since the nature of their land was slightly superior. However, any such increase would get offset by virtue of the distance at which the same was situated as compared to the acquired land in Land Acquisition Case No.347/95 (First Appeal No.98/99), which was much closer to Margao town proper, while the acquired land was on its outskirts.

23. By following the ratio of the decisions cited hereinabove, we fix the market value of the acquired land at Rs.160/- per sq. mts.

24. As a result, we allow the appeal, partly. Consequently, the market value of the acquired land is fixed at the rate of Rs.160/-(rupees one hundred and sixty only) per sq. mt. The Award dated 31st August, 2001 of the learned reference court shall stand modified to that extent. Needless to observe that the applicants would be entitled to all consequential statutory benefits on the market value now fixed by this Court. Considering the facts, parties to bear their own costs.

N. A. BRITTO, J.

P. V. HARDAS, J.